

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1990 - HB 2319

February 24, 2014

SUMMARY OF BILL: Excludes from the definition of “business” for sales and use tax purposes 501(c)(3) organizations that conduct one or more auctions per calendar year and use the proceeds of such auctions for the charitable purposes of the organization, provided the organization conducts an auction at any location within a county where the organization maintains a physical presence and conducts all auctions for a period of no more than 60 days, whether consecutive or nonconsecutive, during any calendar year; each location conducts no more than two auctions per calendar year; and any such organization has been in continuous and active existence in Tennessee for three years immediately preceding the date of any auction and directly operates more than one location in Tennessee.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Net Impact – Exceeds \$12,300/FY13-14
Exceeds \$75,400/FY14-15 and Subsequent Years

Forgone State Revenue – Net Impact – Exceeds \$12,300/FY13-14
Exceeds \$75,400/FY14-15 and Subsequent Years

Decrease Local Revenue – Exceeds \$5,000/FY13-14
Exceeds \$30,800/FY14-15 and Subsequent Years

Forgone Local Revenue – Exceeds \$5,000/FY13-14
Exceeds \$30,800/FY14-15 and Subsequent Years

Assumptions:

- Pursuant to the Department of Revenue Rule 1320-5-1-.09(4), irregular sales of tangible personal property or regular sales of tangible personal property made only during a temporary sales period (30 consecutive days or less) occurring on a semiannual or less frequent basis are casual and isolated sales not subject to the sales and use tax. If a person conducts more than two sales periods during a calendar year, all sales made by such person during that calendar year will be subject to the tax.
- This bill will exempt from the tax sales made by qualified 501(c)(3) companies up to two auctions, lasting no more than 60 days combined in a calendar year, even if such companies engage in regular sales of tangible personal property during that year.

- According to the Department, Internal Revenue Service data shows there were 22,637 501(c)(3) organizations in Tennessee in 2010. Of those, 199 had two or more locations for which FY12-13 returns were filed; total reported net taxable sales were \$153,532,204.
- Seventy percent of these organizations are assumed to have been in continuous and active existence for three years as specified by this bill, resulting in total net taxable sales of \$107,472,543 ($\$153,532,204 \times 70\%$).
- Ten percent of those organizations currently conduct sales through auctions on which sales and use tax is imposed. Net taxable sales for such organizations are estimated to be \$10,747,254 ($\$107,472,543 \times 10\%$).
- Assuming a two percent annual inflation rate, net taxable sales for these organizations are estimated to be \$10,962,199 ($\$10,747,254 \times 102\%$) in FY13-14, and \$11,181,443 ($\$10,962,199 \times 102\%$) in FY14-15. Net taxable sales in subsequent years are assumed to remain constant at the FY14-15 estimate for the purposes of this fiscal note.
- This bill is effective upon becoming law; for the purpose of the fiscal note, it is assumed this bill will become law on May 1, 2014. As a result, the first-year impact (FY13-14) is estimated to be one-sixth of the first full-year impact. Therefore, the net taxable sales affected by this bill in FY13-14 are estimated to be \$1,827,033 ($\$10,962,199 / 6$).
- At least ten percent of such sales are derived from auctions on which sales and use tax is paid under current law. Therefore, exempting such sales from the tax is estimated to result in a decrease in state and local revenue.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent.
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.603 percent of state sales tax revenue as state-shared sales tax revenue.
- Pursuant to Tenn. Code Ann. § 67-6-103(p), no portion of revenue derived from the 0.5 percent sales tax rate increase, from 5.5 percent to 6.0 percent (effective April 1, 1992), or the 1.0 percent sales tax rate increase, from 6.0 percent to 7.0 percent (effective July 15, 2002), shall be distributed to local government.
- The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617% [$(5.5\% / 7.0\%) \times 4.603\%$].
- The net decrease in state sales tax revenue is estimated to exceed \$12,326 [$(\$1,827,033 \times 10.0\% \times 7.0\%) - (\$1,827,033 \times 10.0\% \times 7.0\% \times 3.617\%)$] in FY13-14, and \$75,439 [$(\$11,181,433 \times 10.0\% \times 7.0\%) - (\$11,181,433 \times 10.0\% \times 7.0\% \times 3.617\%)$] in FY14-15 and subsequent years.
- The total decrease in local sales tax revenue is estimated to exceed \$5,031 [$(\$1,827,033 \times 10.0\% \times 2.5\%) + (\$1,827,033 \times 10.0\% \times 7.0\% \times 3.617\%)$] in FY13-14, and \$30,785 [$(\$11,181,433 \times 10.0\% \times 2.5\%) + (\$11,181,433 \times 10.0\% \times 7.0\% \times 3.617\%)$] in FY14-15 and subsequent years.
- Certain qualifying 501(c)(3) companies that currently do not conduct auctions may be incentivized to do so upon passage of this bill. Any impact on state and local revenue from such companies is considered forgone revenue, and is estimated to be similar in magnitude to the estimated decrease in state and local revenue resulting from this bill.
- The amount of forgone state sales tax revenue is estimated to exceed \$12,300 in FY13-14, and exceed \$75,400 in FY14-15 and subsequent years.

- The amount of forgone local sales tax revenue is estimated to exceed \$5,000 in FY13-14, and exceed \$30,800 in FY14-15 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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